



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

September 26, 2003

Mr. Richard S. Talbert  
Law Offices of Richard S. Talbert  
612 South Texas  
Weslaco, Texas 78596-6222

OR2003-6792

Dear Mr. Talbert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188399.

The Hidalgo County Appraisal District (the "district"), which you represent, received a request for Division Orders on specified gas units. You argue that the requested information is excepted from disclosure under section 22.27 of the Tax Code and section 552.113 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

We must first address the district's obligations under section 552.301 of the Government Code. Sections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Public Information Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

In a letter to the requestor dated July 1, 2003, you refused to release the requested information based on a previous ruling from this office. The previous ruling, Open Records Decision No. 387 (1983), is not a previous determination for the information at issue here. *See* Open Records Decision No. 673 (2001) (explaining the circumstances under which an attorney general decision can be considered a previous determination under section 552.301(a)). Therefore, the district was required to request a decision from this office within ten business days of receiving the request for information.

The district received the present request for information on June 27, 2003. Accordingly, you were required to submit your request for a decision from this office no later than July 14, 2003. You submitted your request for a decision on July 21, 2003. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

The applicability of section 552.101 is a compelling reason to withhold information that is presumed public. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 22.27 of the Tax Code states in pertinent part:

- (a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal

property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

Tax Code § 22.27(a). You state that the submitted information was obtained pursuant to an agreement of confidentiality, and provide a sample letter wherein the district solicits information while promising that the information will “be treated in a confidential manner.” Further, the submitted documents contain information about specific real or personal property and property owners. After careful review of the submitted documents and consideration of your arguments, we agree that the information is confidential under section 22.27(a) of the Tax Code. Based on the submitted information we are unable to conclude that an exception to confidentiality in subsection (b) is applicable. Therefore, the district must withhold the information in its entirety under section 552.101 of the Government Code.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

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<sup>2</sup> Because we find the information at issue is confidential by law, we do not reach your arguments under section 552.113 of the Government Code.

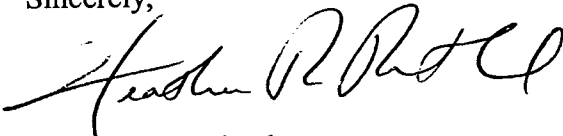
should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather R. Rutland  
Assistant Attorney General  
Open Records Division

HRR/sdk

Ref: ID# 188399

Enc: Submitted documents

c: Mr. Gary D. Campbell  
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Edinburg, Texas 78539  
(w/o enclosures)